

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
BRIEF**



**ORIGINAL**

**77-1020**

*B  
P/s*

**United States Court of Appeals  
For the Second Circuit**

UNITED STATES OF AMERICA,

*Appellee,*

-against-

GERARDO SANCHEZ,

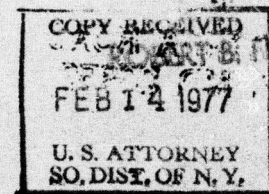
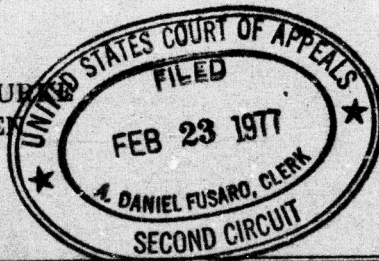
*Appellant.*

SUPPLEMENTAL BRIEF FOR THE APPELLANT

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 77-1020

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UNITED STATES OF AMERICA,

Appellee,

-against-

GERARDO SANCHEZ,

Appellant.

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SUPPLEMENTAL BRIEF FOR

THE APPELLANT

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PRELIMINARY STATEMENT

Appellant submits this brief as s supplement to a brief previously filed with this court and raising Points I, II and III.

STATEMENT OF ISSUE

4. Whether appellant was entitled to a dismissal of the indictment or a hearing on his claim that the classification of cocaine as a narcotic drug is irrational and arbitrary.

STATEMENT OF THE CASE

Appellant set forth the nature of the case, proceedings and disposition in the lower court and statement of facts in his main brief.

On April 5, 1976 the issue presented herein was raised by appellant's co-defendant (Hector Echeverria). Appellant joined in this motion which was subsequently denied by the Honorable Henry F. Werker.

ARGUMENTPOINT IV

THE DISTRICT COURT IMPROPERLY DENIED WITHOUT A HEARING APPELLANT'S MOTION TO DISMISS THE INDICTMENT ON THE GROUND THAT COCAINE HAS BEEN MISCLASSIFIED AS A NARCOTIC DRUG.

Cocaine is classified as a narcotic drug (21 U.S.C. § 802(16)(B)). Nevertheless, medical and scientific opinion exists that cocaine is actually a stimulant and not addictive. In the lower court appellant sought a hearing at which he intended to call expert witnesses to establish the nature of cocaine.

Appellant is aware that this argument has not been generally accepted by the courts to date. However, he wishes

to preserve this issue and is confident that this Court, either today or sometime in the future, will order a hearing and find upon the conclusion thereof that appellant's claim is meritorious and that the classification is irrational and arbitrary.

Appellant submits that this misclassification and the resulting stricter penalties (21 U.S.C. § 841(b)(1)(A&B)) constitute a denial of due process and equal protection and subject him to cruel and unusual punishment. By grouping heroin and cocaine together, the statute ignores the different impact these drugs have on the health of the user and on society as a whole. The non-addictive nature of cocaine permits the cocaine user to stop taking the drug without feeling the effects of withdrawal created by a dependence upon a drug. Thus, it does not lead to crimes of violence by those addicts needing money to support and overpowering craving. This factor alone casts doubt on the constitutional validity of the classification as it now stands.

CONCLUSION

The judgment of conviction in the District Court should be reversed and the indictment and superseding information dismissed, or in the alternative, the case should be remanded for an evidentiary hearing on the violation of appellant's Fifth and Sixth Amendment rights and on whether cocaine has been misclassified as a narcotic drug.

Respectfully submitted,

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AFFIDAVIT OF PERSONAL SERVICE

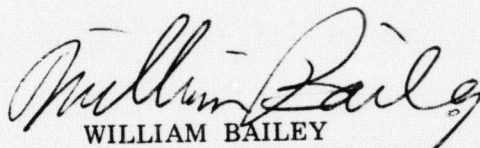
STATE OF NEW YORK  
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 14 day of Feb. ,1977 at No. 1\* St. Andrews Plaza, NYC

deponent served the within Supplemental Brief upon U.S. Atty., So. Dist. of NY

the Appellee herein, by delivering 3 true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this  
14 day of Feb. 1977

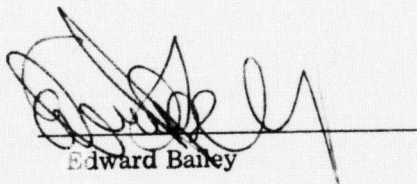
  
WILLIAM BAILEY

Notary Public, State of New York

No. 43-0132945

Qualified in Richmond County

Commission Expires March 30, 1978

  
Edward Bailey